REMARKS

Claims 1-10 are pending in this application. By this Amendment, Applicant cancels claim 10. Entry and consideration of this Amendment is earnestly requested.

Claim Rejections

Rejections Under 35 U.S.C. § 103

A. Response to rejection of claims 1-3, 6 and 7 under 35 U.S.C. §103(a) as being unpatentable over Karim et al.

In response to the rejection of claims 1-3, 6 and 7 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,337,298 of Karim et al. ("Karim"), Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverses the Rejection.

The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness. Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. See MPEP §2143. Finally, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (C.C.P.A. 1974).

In one embodiment of the present subject matter, claim 1 is directed to a stretchable wrap film having a value of MD tear resistance; a value of TD tear resistance; a value of MD tensile strength at 30%; and a polymer blend,

the polymer blend comprising (percent by weight):

I) 50 to 90% of an ethylene polymer composition having a density ranging from 0.920 to 0.94 g/ml, the ethylene polymer composition being selected from the group consisting of

    - an interpolymer of ethylene with at least one comonomer selected from

the group consisting of (1) ethylenically unsaturated organic monomer of esters of unsaturated C_3-C_{20} monocarboxylic acids and C_1 to C_{24} monovalent aliphatic or alicyclic alcohols, wherein the ester content ranges from 2.5 to 8 wt % based on the total weight of the ethylene polymer composition (I) and

- a blend comprising:

(a) a low density ethylene homopolymer (LDPE) having a melt flow rate ranging from 0.1 to 20 g/10 min and a density value of 0.915-0.932 g/ml;

(b) an interpolymer of ethylene with at least one ester in an amount of at least 2.5 wt%, the at least one ester being selected from the group consisting of unsaturated C_3-C_{20} monocarboxylic acids and C_1 to C_{24} monovalent aliphatic or alicyclic alcohols, and vinyl esters of saturated C_2-C_{18} carboxylic acids; and

(c) an ester content of the blend (a) + (b) from 2 to 8 wt%; and

II) 10 to 50% of an ethylene-based polymer component having a density ranging from 0.9 to 0.930 g/mL and a melt flow rate up to 4 g/10 min, the ethylene-based polymer component being selected from the group consisting of

i) a linear polyethylene consisting of ethylene and 0.5 to 20% by mole of a first CH_2=CHR α-olefin, where R is a hydrocarbon radical having 2-8 carbon atoms and

ii) a polymer blend comprising (a) 80-100 parts by weight of a random polymer of ethylene with at least one second CH_2=CHR α-olefin, where R is a hydrocarbon radical having 1-10 carbon atoms, the random polymer (a) containing up to 20 mol% of the second CH_2=CHR α-olefin and having a density between 0.88 and 0.945 g/mL; and (b) from 5 to 30 parts by weight of a random interpolymer of propylene with at least one third CH_2=CHR α-olefin, and optionally ethylene, where R is a hydrocarbon radical having from 2 to 10 carbon atoms, said random interpolymer (b) containing from 60 to 98% by weight of units derived from propylene, from 2 to 40% by weight of

recurring units derived from the third $CH_2=CHR$ α-olefin, and from 0 to 10%
by weight of recurring units derived from ethylene, and having a xylene-
insoluble fraction a room temperature greater than 70%;

wherein the stretchable wrap film has a ratio between the value of MD tear resistance and the value of TD tear resistance over 0.3 and the value of MD tensile strength at 30% ranges between 6.5 to 15 N.

With respect to component II, the Examiner has contended that Karim's <u>low density</u> ethylene polymer teaches Applicants' component IIi. Specifically, the pertinent part of the passage the Examiner relies upon recites:

> The low density ethylene polymers included in the blends will be the conventional film forming grades of ethylene polymers which have a density of less than about 0.945, preferably less than about 0.94, and more especially less than about 0.93. It is preferred to employ polymers having melt indexes* in a range of about 0.5-20, preferably about 0.5-10, and more especially about 0.5-5.0. The low density ethylene polymers can be prepared by the well known high pressure processes, or by lower pressure processes by copolymerizing ethylene with C_3 and higher alpha-olefins. (col. 1, lines 38-48)

As is clear, Karim discloses a <u>low density</u> ethylene polymer, however, claimed component IIi is a <u>linear</u> polyethylene. However, even with respect to low density ethylene polymers, the passage provides no particularly relevant direction to one skilled in the art because it generically describes low density ethylene polymers, circumscribed only by a density limitation, and preferably by melt index limitations. With respect to ethylene copolymers, the passage recites that "[t]he low density ethylene polymers can be prepared by the well known high pressure processes, or by lower pressure processes by copolymerizing ethylene with C_3 and higher alpha-olefins." However, the passage doesn't distinguish between copolymers of ethylene with propylene or copolymers of ethylene and higher alpha-olefins or three-component systems of ethylene, propylene and higher alpha olefins. In any event, Karim is <u>completely silent</u> as to the <u>comonomer content</u> of the ethylene copolymer.

With respect to component I, the Examiner relies upon Karim's ethylene copolymer as disclosing the claimed interpolymer of ethylene. However, as the Examiner has acknowledged, <u>no density range</u> is <u>disclosed</u> in Karim. The Examiner nevertheless concludes

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that Karim teaches the disclosed range:

> While no particular density is disclosed at C1, L50-68, given the wide range
> of melt indexes (i.e. 1-100, C1, L59), one having ordinary skill in the art
> would expect some of the melt indexes to correspond to resin compositions
> having densities within the claimed range (i.e. the ethylene methacrylate
> copolymers in the instant specification at page 12 have melt flow rates of
> around 2). (Office Action, page 3, lines 6-11)

The Examiner thus acknowledges that Karim discloses a "wide" range of melt indexes for its copolymer, but then assumes without citation a correlation between the density range and the melt flow for Karim's copolymer, assumes that the inferred correlation holds for Applicant's interpolymer, and finally concludes that Karim's melt index range is so large as to sweep in the claimed density range. The Examiner reaches this conclusion despite Karim's examples being totally silent with regard to density.

With regard to the Examiner's argument relating to optimizing the relative amounts of ethylene copolymer to LDPE, Applicant points out that an integral feature of Karim's compounds is an ionomer resin. In fact, Karim discourages use of a two-component blend of its ethylene homopolymer and copolymer without the ionomer resin (col. 7, lines 40-44). Therefore, Applicant respectfully submits that there is no basis in Karim for any teaching of optimizing the relative proportions of the ethylene homopolymer and copolymer, absent the ionomer resin.

By the Examiner's standard of Obviousness, there would be a reasonable expectation of success in arriving at Applicants' claimed combinations of components IIi and I, based upon the various teachings of Karim. However, this reasoning would require beginning with teachings of materials that are different or incomplete relative to the claimed components. In the case of Applicant's component IIi, the Examiner would begin with Karim's general disclosure of a low density ethylene polymer, assume that Karim's teachings extend to a different polymer, a linear polyethylene, and then particularly choosing a linear ethylene copolymer out of all polyethylenes. The Examiner would assume a reasonable expectation of success existed in doing so, despite all of Karim's examples being homopolymers. The Examiner would then finally arrive at a specific range of comonomer for the claimed copolymer despite absolutely no direction from Karim's specification. Simultaneously, to arrive at claimed component I, the

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Examiner would assume a reasonable expectation of success in picking a particular density range for the interpolymer, again despite no specific teaching in the specification. This is clearly not the standard of the Federal Circuit since it "does not present a finite (and small in the context of the art) number of options easily traversed to show obviousness." *Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc.*, 520 F.3d 1358, 1364 (Fed. Cir. 2008). Therefore, Applicant respectfully submits that a *prima facie* case of Obviousness have not been made out, and request that the Examiner reconsider and withdraw the rejection.

B.   Response to rejection of claims 4, 5, 8 and 9 under 35 U.S.C. §103(a) as being unpatentable over Karim in view of Cometto et al.

In response to the rejection of claims 4, 5, 8 and 9 under 35 U.S.C. 103(a) as being unpatentable over Karim in view of International Publication No. WO 9520009 of Cometto et al. ("Cometto"), Applicant respectfully submits that a *prima facie* case of Obviousness has not been made out, and traverses the rejection.

The threshold showing required under §103 has been discussed above.

As discussed above, Karim does not teach, suggest or disclose the elements of the current claims, and those arguments are incorporated in this Paragraph. Cometto does not remedy the deficiencies of Karim. Reconsideration and withdrawal of the rejection respectfully is requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this Amendment, Applicant's attorney would welcome the opportunity to discuss the case with the Examiner.

The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.
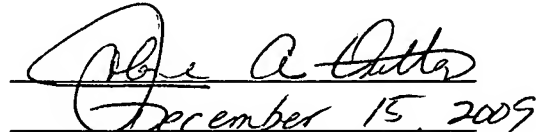
This is intended to be a complete response to the Office Action mailed September 15, 2009.

Respectfully submitted,

[signature]

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I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December *15*, 2009.

[signature]

December 15, 2009
Date of Signature

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